

Claims 3-10 were rejected under the doctrine of obviousness type double patenting as being unpatentable over U.S. Patents 6,096,271 and 6,183,693. That rejection is respectfully traversed.

Each of the '271 and '693 patents was filed subsequent to the priority date of the subject application; the priority patent 5,645,114 was cited in each of the prosecution histories of the '271 and '693 patent; and the claims of those patents are directed to different subject matter than the claims in this application. In particular, although the '271 patent includes an aspirator in the claims, the '271 patent further recites "an actuator which causes the aspiration head to contact the liquid on the slide surface but not contact the slide surface" and a "controller" which are not recited in the claims in this application. None of the claims of the '693 patent recite an aspirator.

Because the claims of each of the later filed '271 and '693 patents are patentably distinguishable from the claims of this application, the double patenting rejection should be withdrawn.

Claims 3-16 are rejected under 35 U.S.C. 102 (b,e) as being anticipated by Rogers et al. or Tseung et al. That rejection is respectfully traversed, particularly as it would be applied to the amended claims. Reconsideration is requested.

The cited prior art was said to teach a slide staining method and apparatus where samples/stains are deposited on the slide, means to remove excess fluid from the slide and heating means. It should be noted, however, that the means to remove of Tseung et al. is not an aspirator as claimed.

As will be discussed in detail below, neither of the cited references includes the claimed aspirator capable of aspirating liquid from a cavity over a microscope slide. Accordingly, the rejection under 35 U.S.C. 102 is not proper with respect to the original claims.

In order to further distinguish the cited references, each of claims 3 and 11 has been amended to recite that the cavity contains a volume of liquid over the at least one microscope slide. Thus, liquid dispensed into and contained within the cavity is thereafter aspirated from the cavity. Support for the new limitation can be found in the specification at page 9, line 23 to page 10, line 5.

Tseung et al. ('649 patent) teach an automated slide stainer that does not have a slide housing, as the term is now defined in the claims. Figure 8E shows a removable tray 190 into which slides are placed. The tray 190 does not have a cavity with a wall positioned so as to limit the lateral spread of liquid off of the slide and thus contain a volume of the liquid. The side walls 194 are splash guards to prevent accidental contact such as during washing of the slides. (Column 12, lines 24-27). In fact, a housing with a wall, such as claimed in amended claims 3 and 11, is contrary to the teaching of Tseung et al. In order to rinse the slides, Tseung et al. teach a method whereby rinse fluid is applied to the slide surface, and the rinse fluid pours off the edge of the slide into a basin. (Column 12, lines 27-30).

Tseung et al. also does not teach a liquid aspirator to remove rinse liquids, as claimed in amended claims 3 and 11. Rather, liquids are blown off of the slide with an air jet. (Column 14, line 67 - Column 15, line 8).

Rogers et al. ('292 patent) also do not teach the above-described elements of an automated slide stainer. As shown in Figure 3, there is no slide housing with a cavity having a wall that is positioned so as to limit the lateral spread of liquid off of the slide and thus contain a volume of liquid. In addition, Rogers does not teach a liquid aspirator to remove rinse liquids, as claimed in amended independent claims 3 and 11. Reagents are removed by means of a rinse nozzle 50 or by spinning the carousel of slides. (Column 3, lines 25-31.)

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned at (978) 341-0036.

Respectfully submitted,

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MARKED UP VERSION OF AMENDMENTSClaim Amendments Under 37 C.F.R. § 1.121(c)(1)(ii)

3. (Amended) A microscope slide stainer comprising:

a slide housing into which at least one microscope slide is inserted, said housing having a cavity into which liquids are dispensed and which contains a volume of liquid over the at least one microscope slide;

a liquid dispenser, said dispenser being capable of movement under microprocessor control so as to align the dispenser with a slide; and

a liquid aspirator, said aspirator being capable of removing liquid from the cavity.

11. (Amended) A method of staining slides comprising:

inserting a slide into a slide housing, said housing having a cavity into which liquids can be dispensed and which contains a volume of liquid over the at least one microscope slide;

moving the slide housing under microprocessor control into alignment with a liquid dispenser;

dispensing liquid into the cavity of said housing, said liquid also contacting said slide;
and

aspirating liquid from the cavity of said housing.